

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6545 of 1996

WITH

SPECIAL CIVIL APPLICATION NO 6547 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 & 2 Yes. Nos. 3 to 5 No.

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SPL.C.A.NO.6545 OF 1996

SANJAY P PATEL

Versus

DIST PRIMARY EDUCATION OFFICER

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SPL.C.A.NO. 6547 OF 1996.

PATEL JATINKUMAR HIRABHAI

Versus

DIST PRIMARY EDUCATION OFFICER

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Appearance:

MR KAMLESH SHETH FOR MR GM AMIN for Petitioner

MR.HASULKAR FOR MR AD OZA for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 28/01/97

ORAL JUDGEMENT

These two Special Civil Applications involving common question of law are based on identical facts and therefore both these Special Civil Applications are decided by this common order.

A notice inviting applications for the post of teachers in the primary section was issued through an advertisement in the daily newspaper 'Gujarat Samachar' on 22.9.1994. Both the petitioners had applied in response to this notice inviting applications for appointment as primary teachers. The last date for submission of the applications was within a period of fifteen days from the date of the issue of the advertisement. There is no dispute about the academic qualification of two petitioners but the dispute is about the age requirement. As per the advertisement the age requirement was that the candidate should not be short of 18 years as on 1.7.1994. The date of birth of petitioner Shri Sanjay Prahladbhai Patel in Special Civil Application No. 6545 of 1996 is 11.1.1977 and that of Shri Patel Jatinkumar Hirabhai, petitioner in Special Civil Application No. 6547 of 1996 is 20.1.1977. Thus the petitioners had not attained the age of 18 years as on 1.7.1994. Both the petitioners had been called for interviews which were held on 18.2.1996 vide letters dated 3.1.1996. The petitioners' grievance is that despite their higher merit they have not been selected for appointment as primary teachers. Their higher merit is not contested by the respondents but the respondents have come with the case that the petitioners were not eligible because they had not attained the age of 18 years as on 1.7.1994. There is no dispute that the appointments have been made in October, 1996 and both the petitioners had attained the age of 18 years in July, 1995 and therefore they were within the age limit at the time when the interview call letters were sent in January, 1996 at the time when the interviews were held in February, 1996 and at the time when the appointments were made in October, 1996. In this view of the matter, the very limited controversy which requires consideration is as to whether the petitioners should be considered to be eligible for the post of primary teacher in terms of notice inviting applications dated 19.9.1994 which was issued on 22.9.1994. It is very clear from the above narrated facts that as on 1.7.1994 the petitioners had not attained the age of 18 years and in terms of this notice inviting applications they could not be considered to be eligible from the point of view of the requirement of age. The reference was made in this regard by Mr. Hasulkar to the relevant rules and the court's

attention was invited to the Gujarat Panchayat Services (Recruitment of Primary Teachers) Rules, 1970. The relevant rule is rule 4 and the same is reproduced as under for ready reference :

"4. Qualification of candidates :- To be eligible for appointment, a candidate must -

- (a)(1) be not less than eighteen years of age and not more than twenty eight years of age,
- (ii) in the case of candidates belonging to a Scheduled Castes or a Scheduled Tribe, be not less than 18 years and not more than 30 years of age, and

Explanation : For the purpose of this rule, a candidate shall be deemed to have attained the age limit, if he attains such age limit before the first July of the year in which the recruitment is made.

- b) have passed any one or more of the qualifying examinations specified in Schedule-I annexed to these rules.

Provided that the Committees, may, if the candidates fulfilling the qualifications specified in Clauses (a) and (b) are not available relax the qualifications specified in Clauses (a) and (b) with the prior approval of the State Government".

There is no question of invoking proviso under Rule 4(b) because it is not the case of the petitioners that candidates fulfilling the qualifications specified in clause (a) & (b) were not available. Hence there is no question of considering the relaxation. The explanation under Rule 4(a) as quoted above shows that for the purpose of this Rule a candidate is to be deemed to have attained the age limit if he attains such age limit before 1st July of the year in which the recruitment is made. Therefore, the words 'year in which the recruitment is made' acquires great significance and this Court is called upon to consider as to whether 1994, 1995 or 1996 is to be taken as the year in which the recruitment is made because in this case the notice inviting application dated 19.5.1994 was published through advertisement dated 22.9.1994; interview call letters were issued on 3.1.1996; interviews were held on 18.2.1996 and the appointments were made in October, 1996. If 1995 is taken as year of recruitment or 1996 is taken as year of recruitment, the petitioners can be held to be eligible but in case 1994 is taken to be the year of recruitment the petitioners cannot be held to be eligible because in that case they are required to

complete 18 years as on 1.7.1994.

There cannot be any dispute with the proposition of law that the process of recruitment starts with the date on which the notice inviting applications is issued and this process of recruitment ultimately culminates into appointment on the basis of a select list and thus the process of recruitment goes on till the selections are finalised on the basis of which the appointment orders are issued. In normal course, the eligibility whether with regard to the qualification or age is to be seen on the last date for making application as is notified under the notice inviting application through advertisement but when the matters are governed by rules and the rules have given deeming date and that deeming date in the facts of this case is prescribed as 1.7.1994. If the process of recruitment goes on for years together, no element of certainty can be ascertained as to which would be the year of completion of recruitment of and therefore at the time when the applications are invited and the candidates from open market apply, they do apply under the good faith and belief that the eligibility with regard to age corresponds to the year in which the process of recruitment starts, more particularly when in terms of the rule it is clearly mentioned in the advertisement itself that minimum age requirement of 18 years is to be seen as on 1.7.1994. Thus, in the facts of this case when the advertisement was issued in 1994 those candidates who had not attained the age of 18 years on 1.7.1994 may not have applied on the understanding that they have not attained the age of 18 years on 1.7.1994, they could not contemplate that the process of recruitment would go on till 1996 and therefore whether they have attained the age of 18 years on 1.7.1994 or not, they may complete the age of 18 years on 1.7.1995 or on 1.7.1996 so on and so forth and therefore they may also apply. If the year in which the recruitment is made as mentioned in the explanation under the rule is taken to mean the year in which the actual appointments are made or the year in which interview call letters are sent, it would be a great uncertainty in terms and if such a view is taken large number of candidates may be deprived of applying in response to the advertisement which says that the candidates who have completed age of 18 years on 1.7.1994 are eligible. No doubt the argument advanced on behalf of the petitioners is quite attractive when it is contemplated that they are having higher merit and yet the candidates having lower merit have been appointed and they have been left out. But this argument which on the face of it is attractive, is not at all competible and cannot be countenanced

further for the plain and simple reason that there could be still more meritorious candidates than the petitioners themselves and they may not have applied in response to this notice inviting applications because they did not consider themselves to be within age limit on 1.7.1994 in terms of the advertisement itself. Thus, correct and legal position cannot be swayed by the attractive argument of higher merit, lest it would result in to violation of Articles 14 and 16 of the Constitution of India because many more candidates like petitioners having still higher merit may not have applied.

Mr.Kamlesh Sheth cited the decision rendered by this Court in the case of Thakore Jignakumar Ranjitsinh Vs. District Primary Education Officer & Others reported in 1996(1)GCD Pg.164 (Gujarat) and submitted that similar situation and the same explanation under rule 4 had been considered by this court in the aforesaid decision and a view was taken in favour of the petitioner in that case. In the case of Thakore Jignakumar (Supra) relied upon by Mr.Sheth the process of recruitment had been started in 1991 and the same was over in July,1992 and 1991 as well as 1992 were taken as a year of recruitment. There is no doubt that the view taken in this decision supports the argument of the learned counsel for the petitioners. The learned counsel for the petitioners has also submitted that on this question a reference is pending before the Division Bench in Special Civil Application No. 6297 of 1996 and he also tried to persue this court to refer the matter to the larger bench. But Mr.Hasulkar has placed strong reliance on 1990(2) SCC Pg.669 [A.P.Public Service Commission, Hyderabad and Another Vs. B. Saratchandra and others] and has submitted that this Supreme Court decision was not considered in the case of Thakore Jignakumar (Supra) and the Supreme Court judgment in A.P.Public Service Commission's case (Supra) clinches the issue involved in this case in favour of the respondents and as such neither the view taken in Thakore Jignakumnar's case (Supra) can be applied nor there is any need to refer the matter to the Division Bench as the point is squarely covered in favour of the respondents on the basis of the law laid down by the Apex Court in the case of A.P.Public Service Commission(Supra). The Supreme Court in this case considered the meaning and scope of the words '1st day of July of the year in which the selection is made' and I find that except for the use of the word recruitment in place of 'selection' rule in the case at hand and the rule which was considered by the Supreme Court are paramateria. In the case before the Supreme Court Rule 5 of the A.P.Police Service Rules provided that a candidate must have completed 21 years

years on the first day of July of the year in which the selection is made and must not have also completed 26 years as on that day. The word 'selection' in the context does not mean only the final act of selecting candidates till the preparation of the select list for appointment. It was held by the Supreme Court that the process of selection begins with the issuance of advertisement and ends with the preparation of the select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. When such are the different steps in the process of selection, the minimum or maximum age for suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated as being overage at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. The Supreme Court has categorically held that it would be, therefore, unreasonable to construe the word 'selection' only as the factum of preparation of the select list. Various steps as pointed out above with reference to the process of selection are the steps in the process of recruitment also. Whether we call it a process of selection or process of recruitment, so far as the element of certainty to avoid fluctuation with regard to the date on which the age is to be seen and the principle that date to attain the minimum or maximum age must be specific and determinate as on particular date for candidates to apply and for the recruiting agency to scrutinise applications, will be the correct principle to apply to the term of the recruitment as well and I am of the considered opinion that in view of the law laid down by the Supreme Court the factors with regard to the age cannot be left to depend upon the duration of the time period which is taken in completing the process of recruitment or process of selection and argument is formidable in the sense that if the process of recruitment or selection is delayed and the principle of considering the age at the time of finalisation of the recruitment or the selection is taken as the determinate of the age, certain persons who cross the age limit while the process is going on will be debarred from being

recruited or selected for no fault on their part because the process of recruitment or selection may go on but the age process does not stop. It may also be made clear that had the aforesaid Supreme Court case been cited at the time when Thakore Jignakumar Ranjitsinh's case was considered and decided the fate of the case could have been different although certain additional facts were also considered in that case viz; the petitioners had already been included in the select list, out of 302 candidates only 50 appointments had been made and 252 appointments were yet to be made . It was also noticed that respondents were desirous to go ahead to make appointments on the basis of the same select list which was prepared in the year 1992 and thus no justification was found to exclude the petitioners in that case and it was considered that the petitioners could not be deprived of the natural consequences and the fruits of their selection and once their names had been included in the select list, the select list has to be operated to its logical end without excluding the petitioners in accordance with the merit position assigned to them in the select list keeping in view the number of vacancies, which were available with the respondents in that case. Be that as it may, in view of the law laid down by the Apex Court relied upon by Mr.Hasulkar i.e. in the case of A.P.Public Service Commission's case (Supra) the contentions raised on behalf of the petitioners cannot be sustained and the age limit has to be seen with reference to the year in which the process of recruitment starts as is notified in the advertisement.

In the case reported in 1989(2) GLR Pg.1135 [Mukeshkumar Maganlal Patel & Others Vs. Director of Primary Education, Gujarat State & Another] the same explanation under Rule 4 was considered and it was held that relevant day would be the day of the year during which the process of recruitment commences. In that case, the process of recruitment had started after 31.5.1988 and it was argued that the term 'year' in explanation should be read as "school year" which had been defined as the period commencing from 1st June and ending on 31st May and the Court held that even if the contention of the learned Counsel for the respondents is taken as legal and valid, it was an admitted position that the recruitment process had started after 31.5.1988 and therefore the recruitment year would be the year 1988. and hence the age of the candidates concerned as on 1st July, 1988 will have to be taken into consideration and not on 1st July, 1987. If the petitioners' age is considered as on 1st July, 1988 all the petitioners would be eligible as far as the criterion regarding age is

concerned. Thus in this decision as a question of law the relevant day was held to be the day of the year during which the process of recruitment commenced but the case was decided in favour of the petitioners on the facts of that case.

Mr.Hasulkar has also cited 1994(2) SCC Pg.723.[U.P.Public Service Commission, U.P.Allahabad and Another Vs. Alpana]. In this case the relevant date for fulfillment of the educational qualification was held to be last date for receipt of the applications by Public Service Commission. Similarly in 1993(3) SCC Pg.168 [Rekha Chaturvedi Vs. University of Rajasthan And Others], the Supreme Court held that relevant date for adjudging of qualification except where the date is specified in the advertisement/notification, the date for scrutiny of qualifications will be the last date for filing the applications and not the date of selection. The question of age was not under consideration in this case, nevertheless fact remains that date of actual selection was not considered to be relevant for the purpose of qualification. The other judgment of this Court to which the reference was made i.e. Special Civil Application No.5718 of 1995 decided on 16.1.1996 in which the same explanation has been considered and even in this case the question was decided on facts because the advertisement was issued on 21.4.1995 and the recruitment was being made for the ensuing school year i.e. the year commencing from 1.6.1995 and ending on 31.5.1996 and the Court held that, that is the year in which the recruitment can be said to have been made or to be made. The Court held that it cannot be said that the recruitment is to be made for school year which had already ended on 31.5.1995 and thus the date of 1.7.1995 was the date fixed with reference to which the candidate's eligibility for appointment was to be determined. Thus as a question of law the relevant date was taken to be in the year in which the process of recruitment commenced but the order was passed on the facts of that case itself. It may be pointed out that it was a case deciding the question of interim relief only and not the final order. Mr.Hasulkar has also cited 1995(Supp.)(4)SCC Pg.706 [Harpal Kaur Chahal] (Supra) in which the Supreme Court has categorically held that material date for determining eligibility is the last date fixed for receipt of applications. A candidate not possessing the requisite qualification on that date, although acquiring the same by the date of selection, is nonetheless ineligible and the appointment given was held to be illegal. This case also was with reference to the academic qualification and not with reference to the age.



In any case, it is established on the basis of A.P.Public Service Commission's case that for determining the age requirement, the relevant date should be the date in the year in which the process of recruitment commences. Thus, I do not find any force in these two Special Civil Applications and consequently the petitioners are not found to be entitled to any relief. Both these Special Civil Applications are hereby dismissed. Rule is hereby discharged in each of the two Special Civil Applications. No order as to costs.

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